

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

KOBRE & KIM LLP,

Plaintiff,

v.

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Defendant.

No. 19 Civ. 10151 (LAK) (OTW)

**STIPULATION AND ORDER OF
SETTLEMENT AND DISMISSAL**

WHEREAS, plaintiff Kobre & Kim LLP (“Plaintiff”) filed the above-captioned suit pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, seeking the release of certain records by defendant U.S. Commodity Futures Trading Commission (“CFTC”) that it had previously requested in a request dated August 21, 2019 (the “FOIA Request”);

WHEREAS, the CFTC answered the complaint and released certain records to Plaintiff in response to its FOIA requests at issue in this lawsuit, subject to various redactions and withholdings pursuant to FOIA Exemptions 5, 7(A), and 7(E), *id.* § 552(b)(5), (7)(A), (7)(E);

WHEREAS, the parties filed cross-motions for summary judgment based on Plaintiff’s challenge to the reasonableness of the CFTC’s search for responsive records (and specifically the date range it used for its searches), the completeness of its *Vaughn* index, and its invocation of FOIA Exemption 5 (and specifically its invocation of the attorney-client privilege and the deliberative-process privilege) and Exemption 7(A);

WHEREAS, the CFTC had invoked FOIA Exemption 7(A), which protects certain records relating to ongoing investigations, in part based on ongoing proceedings in the case of *CFTC v. Kraft Foods Grp., Inc.*, Case No. 15-cv-2881 (N.D. Ill.);

WHEREAS, upon the resolution of the *Kraft* litigation, the CFTC concluded that Exemption 7(A) no longer applied to certain documents, and voluntarily produced them to Plaintiff;

AND WHEREAS, the parties' cross-motions for summary judgment have not been decided by the Court;

IT IS HEREBY STIPULATED, AGREED, and ORDERED as follows:

1. CFTC will process and produce the following additional documents to Plaintiff:

a. CFTC will withdraw its invocation of the deliberative process privilege as to documents it previously produced, and will re-produce any documents or portions of documents for which the prior withholding was based solely on this privilege (and not, for example, materials withheld under both this privilege and the attorney-client privilege).

b. CFTC will search for and process documents dated August 20-21, 2019, subject to the following limitations:

i. It will process these documents only to the extent they are responsive to parts 6, 7, or 8 of the FOIA Request;

ii. It will process these documents through the agency's normal FOIA review process, will not prepare a supplemental *Vaughn* index, and will not produce redacted versions of records that are withheld in full; and

iii. CFTC will assert the deliberative-process privilege as to these documents, in whole or in part, as permitted by law.

2. Plaintiff hereby abandons all other challenges to CFTC's search, *Vaughn* index, and withholdings in this case.

3. This action is hereby dismissed with prejudice, and without costs or fees, provided that the Court shall retain jurisdiction for the purpose of enforcing this Stipulation and

Order. Specifically, Plaintiff will not seek its attorney's fees or costs in this case pursuant to 5 U.S.C. § 552(a)(4)(E).

4. The parties understand and agree that this Stipulation and Order contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.

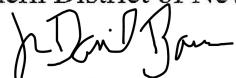
Dated: June 30, 2022
New York, NY

KOBRE & KIM LLP

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Counsel for the CFTC

SO ORDERED:

The Honorable Lewis A. Kaplan
United States District Judge

Date